

Appl. No. 09/912,695
Amdt. dated October 2, 2003
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group

PATENT

REMARKS/ARGUMENTS

This Amendment after Final Rejection is responsive to the Office Action mailed June 26, 2003.

Objections to the Specification

Applicant has added the required section line numbering to the drawings without renumbering the specification. Accordingly, an Amendment is submitted herewith to the specification which adds the required section line numbering to the section lines in the specification. Entry of the amendments to the specification are earnestly solicited.

Claim Rejections - 35 USC 112

Claims 10-14 have been rejected under 35 USC 112, second paragraph, as being indefinite. Specifically, claims 10 through 14 have been objected to in the preamble as requiring an "agitating device." Applicant has made the required Amendments to give all of the claims a uniform preamble.

Claim Rejections on the Merits

The following claim rejections have been made on the merits:

Claims 1, 5, 6, 8-10 and 14 have been rejected under 35 USC 102(b) as being anticipated by FR 2,449,473.

Claims 4, 11 and 13 have been rejected under 35 USC 103(a) as being unpatentable over FR 2,449,473.

Claim 12 is rejected under 35 USC 103(a) has been unpatentable over FR 2,449,473 in view of de Bruyne (United States Patent 4,498,785).

Finally, claim 7 has been indicated as allowable.

Argument

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FR 2,449,473 is newly cited in this prosecution as being necessitated by Applicant's Amendment. Accordingly, the use of the Examiner's discretion is respectfully requested in considering this Amendment. Not knowing of the citation of the French reference, applicant could not have made the remarks contained herein at an earlier time.

FR' 473 discloses a flat projecting part 12 in the lower end of the driving part (see Fig 2). The translation of the specification of FR' 473 has been provided. The projecting part 12 is described as a "central ring 12" (see English translation, page 2, line 6).

Claim 1 of the present application is to be distinguished. The claim uses the language "the bar tapering into a tip." Claim 1 therefore clearly differs from the teaching of FR' 473 since the plain meaning of the word tip means "the pointed or rounded end or extremity of something (see Webster's Third New International Dictionary)." Anticipation is clearly not present.

The mentioned feature that the bar tapers into a tip at the lower end is an essential feature of the present invention. By means of the tapered tip, a toe bearing is formed when the lower tip contacts the bottom of a container (see e.g. page 6, lines 22 - 23 of the specification herein). The toe bearing provides a low friction between the stirring apparatus in the container and good stabilization in the radial direction by magnetic coupling with a drive device. The toe bearing allows smooth stirring at high rotational speed and creates virtually no noise. These advantages cannot be achieved by the stirring apparatus disclosed in FR' 473.

Applicant submits that it is not obvious for someone skilled in the art to provide the stirring apparatus as disclosed in FR' 473 with a toe bearing such as a toe bearing of de Bruyne (United States Patent 4,498,785), since someone skilled in the art will recognize that the stirring apparatus shown in figures of FR' 473 is suitable for low rotational speeds only. Referring to the supplied English translation, the specification mentions the following specific advantages:

... ensuring efficient stirring without the need for high rotational speeds...(emphasis added)

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... efficiently mixing liquids of high viscosity... [Which also hints to low rotational speeds; see below] (comment added).

The Examiner's attention is respectfully requested to Figs. 15 and 17. In these side elevations the disposition of the surface liquids is illustrated for liquids of low viscosity. It can be seen that the level of liquid rises at the side of the container and falls at the center. With falling of the liquid level at the center, the tip becomes crucial. Specifically, the entire stirring mechanism no longer floats, but falls until the tip contacts the bottom of the container. Upon contact of the tip with the bottom of the container, the required bearing is formed. The flat projecting part 12 of FR' 473 would be inoperative; it would cause stirring to slow or stop, defeating the purpose of the apparatus here shown.

Additionally, applicant points out that FR' 473, does not admit of operation at high rotational speeds because of other features appearing in that reference. Specifically, the large dimension of the body 17 and of this stirring element 11 and the loose coupling of this stirring element to the driver bar 1 will cause out-of-balance motion of this stirring apparatus which excludes higher rotational speeds. It is submitted that this reference teaches away from Applicant's invention.

Applicant submits the changes made by this Amendment are pro forma only. The arguments included are necessitated by the citation of the new French reference, FR' 473. Accordingly allowance is urged.

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CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

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